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June 29, 2016

PSC STAFF OPINION 2016-015
Transmitted via Fax and U.S. Mail

Michelle Stewart
Office Manager
Knox County Utility Commission
P.O. Box 1630
Barbourville KY 40906

Re: Request for Legal Staff Opinion

Knox County Utility Commission – Legality of 911 Fee on Water District bills

Dear Ms. Stewart:

The Commission acknowledges receipt of your May 23, 2016 letter on behalf of Knox County Utility Commission requesting a staff advisory opinion to address issues relating to an ordinance passed by Whitley County Fiscal Court that imposes a 911 fee of \$3.00 per month onto water bills. This opinion represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Commission Staff understands the facts to be as follows: Knox County Utility Commission serves 185 customers in Whitley County, Kentucky. Whitley County Fiscal Court passed Ordinance No. 2016-02 ("Ordinance") that will require water utilities serving Whitley County to collect a service fee on each Whitley County customer's monthly utility bill to fund 911 emergency telephone services ("911 service fee") in Whitley County, Kentucky. The Ordinance imposes a 911 service fee on active water services and directs the water utilities to collect the 911 service fee calculated at \$3.00 per active water service customer. The water utilities will collect the fee and remit amounts collected to Whitley County Fiscal Court. The 911 service fee takes effect on July 1, 2016.

You specifically request a legal opinion on the following questions:

1. Whether the imposition of a 911 service fee on water utility bills is legal.
2. Whether Knox County Utility Commission will need to change its tariff to include the 911 service fee.
3. Who bears responsibility for notifying Knox County Utility Commission customers about the 911 service fee.
4. Whether Knox County Utility Commission can charge a late fee if the 911 service fee is not paid on time.
5. Whether Knox County Utility Commission must cut off a customer's water if the customer refuses to pay the 911 service fee.
6. Whether Knox County Utility Commission can charge the Whitley County Fiscal Court a collection fee.

With regard to your first question, whether the Ordinance imposing the 911 service fee on water utility bills is legal, Commission Staff is unable to address that issue since it is beyond the scope of our jurisdiction under KRS Chapter 278. Commission Staff notes that there is pending litigation regarding the imposition of 911 service fees on a water meters. In October 2015, the Kentucky Supreme Court held that a fiscal court's imposition of 911 service fees on residential and commercial units within that county was a constitutional and statutorily valid exercise of the fiscal court's authority. *Greater Cincinnati/Northern Ky. Apt. Assoc. v. Campbell Co. Fiscal Court*, 479 S.W.3d 603 (2015). Prior to that decision, the Kentucky Court of Appeals found that a 911 service fee imposed by Garrard County Fiscal Court on water meters was not valid. However, in February 2016, the Kentucky Supreme Court vacated that decision and remanded that matter to the Court of Appeals for further consideration in light of *Greater Cincinnati. City of Lancaster v. Garrard County*, No. 2013-CA-000716 (Ct. App. July 3, 2014). (review granted, decision vacated Feb. 18, 2016). The Court of Appeals has not rendered a decision yet.

In regard to your second question, whether Knox County Utility Commission will need to change its tariff to include the 911 service fee, the impact upon the filed tariff depends upon whether the fee is imposed directly on customers, with the utility acting as a collection agent, or whether the fee is imposed upon the utility, who then passes the expense onto the customer. Here, the Ordinance is ambiguous whether the 911

service fee is imposed upon utility service, and thus the utility, or whether the 911 service fee is imposed upon the utility customer, with the utility acting merely as a collection agent. In the first paragraph on page 2 of the Ordinance, the language appears to indicate that the 911 service fee is imposed upon the utility customer and that the utility merely acts as a collection agent. However, in numbered paragraphs 1 and 2 on page 2 of the Ordinance, the 911 service fee is imposed upon "active water services," which would be indicative of a fee imposed upon a utility.

If the Ordinance is read to impose a fee on the utility and the utility intends to collect the fee from customers as part of the utility revenue, then the fee would be a utility expense which would have to be covered through a rate. KRS 278.010(2) defines a rate as:

[A]ny individual or joint fare, toll, charge, rental, or other compensation for service rendered by any utility, and any rule, regulation, practice, act, requirements, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff therefore.

If the fee is to be recovered through a rate, then, pursuant to Commission statutes and regulations, the utility must either pay the fee out of existing revenue or file a rate case pursuant to 807 KAR 5:001, Section 16, or alternative rate filing to increase rates pursuant to 807 KAR 5:076. If the Ordinance is read to impose a fee directly on the utility customer with the utility acting merely as a collection agent, then the utility can charge the 911 service fee without increasing existing rates, but should revise its tariff to pass through the government-imposed fee pursuant to KRS 278.160(1) and 807 KAR 5:011, which requires regulated utilities to submit a complete tariff with the Commission setting forth, among other things, the utility's rates, charges, regulations and conditions of service over which the Commission has jurisdiction.

Because the answer to your second question involves interpretation of a county ordinance, Commission Staff is unable to address that issue because it is beyond the scope of the Commission's jurisdiction pursuant to KRS Chapter 278.

Your third question is who bears responsibility for notifying Knox County Utility Commission customers regarding the imposition of 911 service fees. As with the second question, the answer depends upon how the ordinance is read. If the Ordinance is read to impose the 911 service fee upon the utility and the utility seeks to pass the fee onto its customers in the form of a rate increase, then the notice requirements set forth in 807 KAR 5:001, Section 17 apply. If the Ordinance is read to impose the 911 service fee upon the customer with the utility acting merely as collection agent, then the notice requirements for a change in the tariff set forth in 807 KAR 5:011, Section 8 apply.

The answer to your third question involves interpretation of a county ordinance, and thus Commission Staff is unable to address that issue because it is beyond the scope of the Commission's jurisdiction pursuant to KRS Chapter 278.

Your fourth and fifth questions are related: whether Knox County Utility Commission can charge a late fee if the 911 service fee is not paid on time and whether Knox County Utility Commission can terminate water service if a customer refuses to pay the 911 service fee. The answer to both questions again depends upon the reading of the Ordinance and whether the 911 service fee is imposed upon the utility or the utility customer. If the 911 service fee is imposed upon the utility and the utility seeks to recover the expense through rates, then the provisions of 807 KAR 5:006, Section 9(3)(h) would apply for a late payment charge and 807 KAR 5:006, Section 15 would apply for termination for nonpayment. 807 KAR 5:006, Section 9(3)(h) provides that a utility may include in its tariff a late payment charge if a customer fails to pay a bill for services by the due date shown on the customer's bill. Similarly, 807 KAR 5:006, Section 15(f) permits termination of service for nonpayment of charges incurred for utility service, but advance notice of termination must be provided pursuant to that section.

If the 911 service fee is imposed upon the customer and the utility acts merely as collection agent, then the answer is further dependent upon the remedies set forth in numbered paragraph 2 of the Ordinance, which states:

IT IS FURTHER ORDAINED that the county may enforce this fee on active water services by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the county shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.

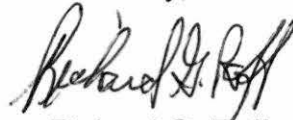
Based upon this language, the answer involves interpretation of the Ordinance, and whether the county retains exclusive enforcement authority. Because the answer involves interpretation of a county ordinance, Commission Staff is unable to address that issue because it is beyond the scope of the Commission's jurisdiction pursuant to KRS Chapter 278. If it is determined that Knox County Utility Commission is prohibited from charging late fees or disconnecting service for late payment or non-payment of the 911 service fees, that prohibition should be included in the regulated utility's tariff.

With regard to your sixth question, whether Knox County Utility Commission can charge the Whitley County Fiscal Court an administrative fee for collecting the 911

service fee, Commission Staff is unable to address that issue since it is beyond the scope of our jurisdiction under KRS Chapter 278.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Nancy Vinsel, Staff Attorney, at (502) 782-2582.

Sincerely,



Richard G. Raff
General Counsel

NJV/ph